

BEFORE THE BOARD OF
NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

IN THE MATTER OF APPLICATION FOR
RESERVATION OF WATER NO. 9939-r43QJ
BY THE CITY OF LAUREL

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FINDINGS OF FACT AND CON-
CLUSIONS OF LAW OF APPLI-
CATION NO. 9939-r43QJ

The above-entitled matter came on regularly for hearing starting on or about August 8, 1977, in Billings, Montana, before the Montana Board of Natural Resources and Conservation and its duly appointed Hearing Examiner, James Driscoll. The Applicant appeared by and through its counsel of record, Larry Herman. The Montana Department of Natural Resources and Conservation appeared by and through its counsel or record, Richard Gordon. The Montana Department of Health and Environmental Sciences appeared by and through its counsel of record, Mona Jamison. The Montana Department of Fish and Game appeared by and through its counsel of record, Clayton Herron. The fourteen applicant conservation districts appeared by and through their counsel of record, Gary Spaeth. The City of Billings appeared by and through its counsel of record, Calvin Calton. The Montana Power Company appeared by and through its counsel of record, Robert Woodahl. Witnesses were duly sworn, and oral and documentary evidence was introduced.

The Board, having read and fully considered the complete record, makes the following Findings of Fact and Conclusions of Law relating to the City of Laurel, Application No. 9939-r43QJ:

FINDINGS OF FACT

1. The City of Laurel has applied for a reservation of 16,830 acre-feet of water per year (af/y) with a maximum diversionary flow rate of 23.25 cubic feet per second (cfs) from the Yellowstone River to be used for municipal water supply purposes for the year 2007 Application No. 9939-r43QJ).

Findings Related to the Purpose of the Reservation (89-890(3)(a))

2. The purpose of the reservation is to ensure water availability and an adequate streamflow for the future needs of the City of Laurel and adjacent areas (City of Laurel, narrative attachment submitted with Application 9939-r43J, pp. 2 and 3, Tr. Vol. 1, Cross of A.T. Kersich, p. 73).

3. It is established to the satisfaction of the Board that a purpose of the reservation has been shown (Finding 2).

4. A reservation of water is needed because it will secure a priority date for future developments that is earlier than the priority dates such developments would have if permits were obtained immediately before construction or use began (Draft EIS, Vol. 1, p. 1).

5. Because of the increased demands for water from agriculture and industry, a reservation of water is needed to insure growth of the City of Laurel (City of Laurel, Tr. Vol. 1, Cross of Kersich, p. 73).

6. A reservation of water is needed. The the validity of the City of Livingston's existing filed appropriations has not been proven (Tr. Vol. 1, Cross of Kersich, p. 54).

7. A reservation of water is needed. The Yellowstone River water is the only practical source of municipal water available to the City of Laurel (Tr. Vol. 1, Cross of Kersich, p. 75).

8. A reservation of water is needed. A reservation would be an assurance that the City of Laurel would have an adequate quantity of water available

from the Yellowstone River for its municipal water supply (City of Laurel, narrative attachment submitted with Application No. 9939-r43QJ, p. 3).

9. The City of Laurel will need an increased water supply in the future.

10. The City of Laurel's population is growing rapidly (City of Laurel, narrative attachment submitted with Application No. 9939-r43QJ, p. 2; Tr. Vol. 1, Redirect of Kersich, p. 128).

11. The City of Laurel is experiencing growth as evidenced by additional subdivisions, trailer courts and increased industrial activity (Tr. Vol. I, Testimony of Kersich; narrative attachment submitted with Application No. 9939-r43QJ, p. 2).

12. New industrial development is expected in the City of Laurel in the near future, and such development is likely to need water supplied by the City of Laurel (City of Laurel, narrative attachment submitted with Application No. 9939-r43QJ, p. 3).

13. The City of Laurel will need an increased water supply in the future (City of Laurel, narrative attachment submitted with Application No. 9939-r43QJ, p. 3).

14. It is established to the satisfaction of the Board that the need for a reservation of water has been shown (Findings 4 through 8).

Findings Related to Amount of Water Necessary for the Purpose of the Reservation
(89-890(3)(c))

15. The population in the City of Laurel in 1970 was 4,454 (Draft EIS, Vol. I, p. 174).

16. The City of Laurel's reservation request is based on a projected population of 35,000 persons in the year 2007 (City of Laurel, narrative attachment submitted with Application No. 9939-r43QJ, p. 2; Tr. Vol. I, following p. 38, Testimony of Kersich, p. 7).

17. The 35,000 projected population is based on a sewer system service population rather than a water supply system service population and may not be the same as the number of persons served by a water system (Tr. Vol. I, Cross of Kersich, p. 125;

Tr. Vol. I, Redirect of Kersich, p. 127; Department of Natural Resources Finding of Fact 24).

18. The Department of Natural Resources has estimated the population of the City of Laurel in the year 2000 to be 23,000 people.

19. The Department of Natural Resources' population estimate for the year 2000 for the City of Laurel is conservative and not supported by evidence.

20. The average municipal per capita water use rate in Yellowstone Basin in 1970 was 212 gpcd (Draft EIS, Vol. II, p. 405).

21. The average municipal per capita water use rate in Yellowstone County in 1970 was 193 gpcd (Draft EIS, Vol. II, p. 405).

22. The City of Laurel has utilized a per capita water use rate of about 500 gallons per capita per day (gpcd) in calculating its request (Tr. Vol. 1, Cross of Kersich, p. 126).

23. Based on the Average use rates listed in Findings 20 and 21, 250 gpcd is a reasonable average use rate for the City of Laurel for the year 2007.

24. From the data presented at these proceedings, a reasonable population of the City of Laurel for the year 2007 is 30,000 people.

25. With a population of 30,000 and an average use rate of 250 gallons per capita per day, the City of Laurel would need 8,400 acre-feet per year of water.

26. With a population of 4,434 and an average use rate of 250 gpcd, the City of Laurel's estimated water use in the year 1970 was 1,249 af/y (Findings 15 and 23).

27. A reservation that would provide sufficient water to meet the City's projected increased requirements to the year 2007 is the difference between the projected requirements in 2007 (8,400 af/y) and the existing water usage (1,249 af/y).

28. It is established to the satisfaction of the Board that 7,151 af/y is the amount of water necessary for the purpose of the reservation to the year 2007.

Findings Related to the Public Interest (89-890(3)(d))

29. Municipal water use is a recognized beneficial use of water under Montana law (City of Laurel, narrative attachment submitted with Application No. 9939-r43QJ, p. 3).

30. Adoption of a reservation of water for the City of Laurel would have a negligible environmental impact (Draft EIS, Vol. I, pp. 173 and 174).

31. Adoption of a reservation of water for the City of Laurel would not reduce the flow of the Yellowstone River significantly (Draft EIS, Vol. 1, p. 173).

32. Adoption of a reservation of water for the City of Laurel would provide public health benefits (City of Laurel, narrative attachment submitted with Application No. 9939-r43QJ, p. 3).

33. Adoption of a reservation of water for the City of Laurel would provide economic benefits and contribute to community planning and orderly growth and development (Tr. Vol. 1, Cross of Kersich, p. 124; Tr. Vol. 1, following p. 38, Testimony of Kersich, p. 8; City of Laurel, narrative attachment submitted with Application No. 9939-r43QJ, p. 3).

34. It is established to the satisfaction of the Board that the reservation of 7,151 af/y from the Yellowstone River for the City of Laurel for municipal water supply use is in the public interest, and that there will be progress toward accomplishment of the purpose of the reservation with reasonable diligence in accordance with an established plan (Findings 1 and 29 through 33; City of Laurel, Application No. 9939-r43QJ).

CONCLUSIONS OF LAW

1. Chapter 8, Title 89, R.C.M. 1947, and in particular, Section 89-890, R.C.M. 1947, authorize the adoption by the Montana Board of Natural Resources and Conservation of orders reserving water to qualified applicants for reservation of water.

2. If ordered adopted, a reservation must be ordered adopted in accordance with Chapter 8, Title 89, R.C.M. 1947, and any rules adopted thereunder.

3. The Applicant, City of Laurel, is a political subdivision of the State of Montana and as such is entitled to apply to reserve waters within the State of Montana in accordance with 89-890, R.C.M. 1947, and any rules adopted thereunder.

4. All pertinent statutes and rules of the State of Montana have been adhered to in review of this reservation application, both by the Montana Department of Natural Resources and Conservation and by the Montana Board of Natural Resources and Conservation.

5. Based upon the above Findings of Fact, and specifically based upon any condition, limitation, or modification of the full application appearing in said Findings, all pertinent criteria delineated in Section 89-890, R.C.M. 1947, and any rules adopted thereunder providing for the adoption of an order reserving water have been met.

6. Nothing found herein has bearing upon the status of water rights claimed by the Applicant other than those herein newly applied for, nor does anything found herein have bearing on the status of claimed water rights of any other party except in relation to those rights herein newly applied for, to the extent necessary to reach a conclusion herein.